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EXAMINER
SOREY, ROBERT A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments from the response filed on 08/10/2010 have been fully considered and will be addressed below in the order in which they appeared.

Firstly, (1) Applicant argues the "a processor that acts as a web server" limitation is required by claim 14. Applicant's argument with regard to this limitation addresses three major points:

A) "A web server is a computer or processor that runs programs to deliver or "serve" content, typically web pages, using the Hypertext Transfer Protocol (HTTP) over the World Wide Web."

B) "De La Huerga merely teaches in Figs. 17, 26 and 31 that the processor 104 of the controller 103 housed in a pump housing is in communication with a remote central controller 260 (with processor 620) and a remote server 630."

To support this Applicant quotes paragraph 149 of De La Huerga which states: "Processor 104 is linked to each of display 123, indicators 124 and 126, transponder 122 and keyboard 106. In addition, as illustrated in FIG. 17, processor 103 is also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices".

Applicant then states that "[n]o mentions of a server by De La Huerga clearly

suggest that the processor disposed in the pump itself acts as a web server."

C) "In fact, quite the opposite is true and De La Huerga actually teaches away

from the present invention in numerous passages. See "server" in paragraphs

[0151], [0154], [0155], [0222], [0243], [0255]-[0257], [0259], [0268] and [0269]. It

is clear from Figs. 17, 26 and 31, the "server" references above, and the

description about multiple IV pump in paragraphs [0186] et seq. that the pump

does not have a processor that acts as a web server. There is also no mention of

"web" or "web pages" in De La Huerga."

The Examiner respectfully disagrees. Applicant's argument (1) is not persuasive.

Applicant claims that the processor "acts as" a web server. Any standard

personal computer can "act as" a web server. In fact, any standard personal computer

can be a web server. The requirements of a server are broad – as Applicant points out,

typically encompassing delivery of data (in a variety of protocols) over a

communications network. De La Huerga's processor 104 in Figure 17 performs this

function. The processor is within the infusion controller housing, outputs information to

display 123, and communicates to other servers via communications channel 255.

If there are special functions that only a web server can perform that should

apply to the present invention they are not claimed. Applicant claims that the dual

function touch screen displays web browser information. If the processor is providing

information to the display (the pump housing, processor, and screen are all part of the

same bedside system) then there is no "serving" occurring – nonfunctional information

(web information) from the processor may be displayed but it is not required by the

claims that the system be connected to the Internet or access the Internet (or any other

communications network – for example, an intranet).

Applicant's claims require that the processor act as the server. Servers, as

Applicant points out, serve information. If the processor is "serving" the display

information it is not necessarily connected to the Internet or other communication

network. In this case, given the broadest reasonable interpretation, the processor acting

as server is performing the common features of a standard processor that serves the

display information. In other words, the functionality taught by Applicant does not

encompass the features of a server that would distinguish it from a standard personal

computer. In fact, the bedside system is merely displaying information and is more like a

computer terminal than it is a server.

The above subtleties notwithstanding, De La Huerga teaches a processor on a

pump that acts as a server. The Internet consists of many communicating servers that

act to "server" data through a network and De La Huerga teaches a network of

communicating servers. Note that Figure 17 shows a double arrow indicating bi-

directional communication over communications channel 255; hence, De La Huerga

teaches a process that can "act as" a server to other servers such as controller 260 (a

local server) and remote server like server element 630 of Figure 31. De La Huerga's

processor 103 outputs information to display 123 and to communications channel 255 to

other server devices such as the one Applicant points out in the paragraphs cited in point (C) of the above argument – remote server 630.

De La Huerga does not teach away from the invention. No where in paragraphs [0151], [0154], [0155], [0222], [0243], [0255]-[0257], [0259], [0268] and [0269] was there found a recitation that states or approximates that the "pump does not have a processor that acts as a web server" or even that such is a possibility.

While there is no mention of "web" or "web pages" in De La Huerga, the recitation in De La Huerga, paragraph 149, cited to Applicant concerning the argued limitations at present states that "processor 103 is also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices". This is sufficient to met web or "web pages". It is also noted that the "web pages" language was not found in the present claims.

Secondly, (2) Applicant argues:

"The Examiner misinterprets the meaning of the term "unitary dual function touch screen display" in claim 14 and fails to appreciate that the dual functions are recited in the remaining portion of the claim and related to the web browser function of the pump processor. That is, the unitary display is dual function in that it provides one portion that displays pump information and another portion that concurrently displays web browser information. Clearly, taken in context of the entire claim, the limitations about the portions of the display screen and their content are not "nonfunctional descriptive material" as alleged by the Examiner.

The dual functions are not merely input and output typical with a touch screen as

the Examiner suggests, but the functions of displaying on one pump screen

concurrently both pump information and web browser information from the web

server processor of the pump on different portions of the screen."

The Examiner respectfully disagrees. Applicant's argument (2) is not persuasive.

An explanation of the rejection: De La Huerga teaches a display with "first

portions" as cited in Figures 17 and 18 and paragraphs 152, 164, and 173. The term

"portion" is broadly interpreted and is met by the pump information areas displayed. De

La Huerga also teaches touch screens linked and associated with the pump in

paragraph 163 but does not teach that the display on the pump is a dual function touch

screen so an obviousness citation with a statement of motivation was used to cover this

limitation. As per the second portion to be displayed on the dual function touch screen

display, Zerhusen (Figure 43 and columns 5, 14, 16, 34, and 35) was used to cover the

simultaneous display of two portions and the content of the second portion (the web

browser information being met by Internet icon and customized home page or other

Internet connection being made). As summarized here, all of Applicant's broadly

claimed limitations are met.

That information is displayed is a function of the system. The display of portions

is interpreted as functional. The specific information displayed, in this particular case, is

not germane to the structure of the system and is therefore nonfunctional descriptive

material. Though the nonfunctional descriptive material need only be given little weight

(See: Ex parte Herman Mathias, Appeal No. 2005-1851, Application No. 09/612788; and Ex parte James Prescott Curry, Appeal No. 2005-0509, Application No. 09/449237), the Examiner was able to cite prior art that read upon the nonfunctional descriptive material in the rejections above. Little weight was placed on the information being displayed (i.e., the pump information and the web browser information) since the effect of displaying did not alter or change system. Any like system capable of displaying in the manner claimed by Applicant - no matter the information being displayed – meets Applicant's invention. Therefore, the pump information and web browser information in the claims is nonfunctional descriptive material - meaning that the content information carries little weight. It is dually noted here, however, that though the nonfiction descriptive material need be given little weight, the prior art meets the claimed nonfunctional descriptive material regardless. The terms "pump information" and "web browser information" were read broadly.

Additionally, though it is not relied upon for the purposes of rejection because the prior art of De La Huerga and Zerhusen, as combined in an obviousness-type rejection, meet all of the claimed limitations, it is also noted that the arrangement of the data on the display is a matter of obviousness design choice in this particular instance. The arrangement of specific elements in the prior art need not be exactly the same as those presented in the claims. Section 2144.04 of the MPEP presents case law that sets legal precedent for supporting the rationale to reject based on design choice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT SOREY whose telephone number is (571) 270-3606. The examiner can normally be reached on Monday through Friday, 8:30AM to 5:00PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Morgan can be reached on (571) 272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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